RAILROADS — TITLE TO LAND OR RIGHT OF WAY — RIGHT OF OWNER TO OUST RAILROAD WRONGFULLY IN POSSESSION. — A railroad company paid consideration for certain lands and constructed its roadway upon them. The plaintiff was cognizant of this occupancy, but believed the title of the railroad company to be unassailable. After several years, it developed that the plaintiff had an unclouded title to the land, and she brought suit to obtain possession. By statute it was provided that a railroad must pay compensation before entrance upon land for the purpose of condemnation. *Held*, that the plaintiff cannot recover possession, but can recover only the value of the land as of the date when the railroad took possession. *Pons* v. *Yazoo & Mississippi Valley R. Co.*, 59 So. 721 (La.).

It is a general doctrine that when a railroad occupies land without having employed its privilege of eminent domain the rightful owner may bring ejectment. *Louisville, St. L. & T. R. Co.* v. *Rudd*, 30 S. W. 604 (Ky.); *McClinton* v. *Pittsburg, F. W. & C. Ry. Co.*, 66 Pa. St. 404. See *State* v. *Summerville*, 104 La. 74, 86, 28 So. 977, 982. Many cases hold that where entry and improvement are made with the owner's knowledge and sufferance he is estopped from later ousting the railroad. *Taylor* v. *Chicago, M. & St. P. R. Co.*, 63 Wis. 327, 24 N. W. 84; *Lawrence* v. *Morgan's, etc. Steamship Co.*, 39 La. Ann. 427, 2 So. 69. But the law prescribes a mode by which a railroad may lawfully obtain property, and there seems no sufficient reason why the courts should be more ingenious in inferring estoppels for the benefit of wrongdoing railroads than for the benefit of other trespassers. *Hooper* v. *Columbus & Western Ry. Co.*, 78 Ala. 213; *St. Joseph & Denver City R. Co.* v. *Callender*, 13 Kan. 496. But see 2 ELLIOTT, RAILROADS, 2 ed., § 1055. It is difficult to see how the court applies the estoppel doctrine to the facts of the principal case. *Cf. Bradley* v. *Missouri Pacific Ry. Co.*, 91 Mo. 493, 4 S. W. 427. Some courts, however, urge that public convenience demands that a railroad should not be ousted. *Indiana, B. & W. Ry. Co.* v. *Allen*, 113 Ind. 581, 15 N. E. 446. Whether the common-law property right of the landowner should be sacrificed to utilitarianism admits of argument. *Stretton* v. *Great Western & Brantford Ry. Co.*, 40 L. J. Eq. 50. See LEWIS, EMINENT DOMAIN, 2 ed., § 648. In any event the courts could in extreme cases protect public interests by staying execution long enough to give the railroad reasonable opportunity to expropriate. See *Illinois Central R. Co.* v. *Le Blanc*, 74 Miss. 650, 21 So. 760; *Pittsburgh & Lake Erie R. Co.* v. *Bruce*, 102 Pa. St. 23, 35. *Contra*, *Strong* v. *Brooklyn*, 12 Hun (N. Y.) 453. The reasons advanced by the court hardly warrant the handing over of land, demanded by the rightful owner, to a railroad which has never employed the machinery of eminent domain.

RECEIVERS — LIABILITY OF LESSOR RAILROAD FOR EXPENSES OF RECEIVER OF LESSEE. — A lease of a railroad provided for assumption of the lessor's liabilities and forfeiture upon twelve months' default on the lessee's covenants. Upon insolvency of the lessee road, a receiver was appointed who operated for a while and then renounced the lease. During operation, the receiver made expenditures to protect the lessor's franchise which made the result of the operation a loss. *Held*, that the lessor is chargeable with the loss. *Pennsylvania Street Co.* v. *New York City Ry. Co.*, *"Termination of Lease Proceeding,"* C. C. A., Second Circ., 1912. See NOTES, p. 165.

TITLE, OWNERSHIP AND POSSESSION — WILD LANDS. — The plaintiff as security for a debt conveyed certain wild lands to the defendant, who paid taxes on the land but never entered into actual possession. The statute of limitations provided that no suit to redeem a mortgage should be brought more than twenty years after the mortgagee obtained possession of the land. The plaintiff brought suit to redeem more than twenty years after the con-

veyance. *Held*, that the plaintiff's claim is barred. *Kirby* v. *Cowderoy*, 107 L. T. R. 74 (Eng., P. C., June 18, 1912).

The court in the principal case holds that the statutory requirement of possession is satisfied by the conveyance to the mortgagee and the payment of taxes on the property. It is at least doubtful whether a conveyance of lands not in the actual possession of anyone can confer a constructive possession on the grantee. That a mortgage though in form an absolute deed could have this effect is even less reasonable, since a mortgagor usually remains in possession. Furthermore, any possession flowing from the fact of conveyance can at most be only constructive, and it is straining the language of the statute to include such a possession. BRIT. COL., REV. STAT., 1897, c. 123, § 40. An analogy may be drawn to the case of suits to quiet title where actual possession of the plaintiff must be shown even in the case of wild lands. *Cantlin* v. *Holliday-Klotz Land & Lumber Co.*, 151 Mo. 159, 52 S. W. 247. If the mortgagee was not originally in possession, it is difficult to see how he could enter by paying the taxes. This seems to be an evidence of claim of ownership rather than an act of possession. *Pharis* v. *Jones*, 122 Mo. 125, 26 S. W. 1032.

TORTS — DEFENSES — RELEASE OF ONE JOINT TORTFEASOR WITH RESERVATION OF RIGHTS AGAINST OTHERS. — The plaintiff, having brought suit against several defendants jointly liable for injuries sustained in consequence of their negligence, gave a release to one of the defendants, reserving his rights against the others. *Held*, that the release operates as a bar to the suit against the co-defendants. *Flynn* v. *Manson*, 126 Pac. 181 (Cal.).

In the analogous case in contracts where a release is given by an obligee to one of several joint obligors, reserving rights against the others, it is well settled that the release will be interpreted as a covenant not to sue the party to whom the release is given and does not bar action against the others. *Dickinson* v. *Metacomet National Bank*, 130 Mass. 132; *Benton* v. *Mullen*, 61 N. H. 125. Though the authorities are in conflict, the modern tendency has been similarly to interpret such a release of one of several joint tortfeasors. *Edens* v. *Fletcher*, 79 Kan. 139, 98 Pac. 784; *Walsh* v. *New York Central & H. R. R. Co.*, 140 N. Y. App. Div. 1, 124 N. Y. Supp. 312. The opposite result reached in the principal case seems less desirable, because it fails to carry out the intent of the parties. See 16 HARV. L. REV. 529; 22 HARV. L. REV. 458.

WATERS AND WATERCOURSES — NATURAL LAKES AND PONDS — ENCROACHMENT UPON HIGHWAY AND LANDS BEYOND: TITLE TO LAND UNDER WATER BETWEEN HIGHWAY AND NEW SHORE LINE. — The water of Lake Erie by gradual erosion washed away a public highway along the shore and also a portion of the land belonging to the plaintiff's lessor which bordered upon the highway. The crown leased to the defendant all the land under the waters of Lake Erie in front of the property of the plaintiff's lessor. The defendant entered and drilled for oil in the land under water between the original boundary of this property and the new shore line. *Held*, that the plaintiff may recover in an action of trespass. *Volcanic Oil & Gas Co.* v. *Chaplin*, 22 Ont. Wkly. R. 800.

The crown has title to the land under the water on the Canadian side of the Great Lakes. *Attorney General* v. *Perry*, 15 U. C. C. P. 329. And the owner of land beneath waters ordinarily gains title to land of a riparian owner gradually washed away and covered by the encroachment of the waters. *In the Matter of Hull & Selsby Ry.*, 5 M. & W. 327; *Widdecombe* v. *Chiles*, 173 Mo. 195, 73 S. W. 444. It is well settled that when land is bounded by a public highway on the shore riparian rights do not vest in the owner of such land. *Cook* v. *City of Burlington*, 30 Ia. 94; *Schools* v. *Risley*, 10 Wall. (U. S.) 91. But by the great weight of authority when water slowly encroaching reaches